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**Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of Claims Against the Dealer Bond

of Choice Autos

Case No 99-H-1117

FINAL DECISION

On December 3, 1998, Sarene Erickson-Wallerman filed a claim with the Wisconsin Department of Transportation against the motor vehicle dealer bond of Choice Autos. The claim along with the documents gathered by the Department in its investigation of the claim was referred to the Division of Hearings and Appeals for hearing.

An informal telephone hearing was conducted on May 28, 1999, Mark J. Kaiser, Administrative Law Judge, presiding. Participating in the telephone hearing were Ms. Erickson-Wallerman, Sarene Erickson-Wallerman, her father, Don Erickson, and Attorney Jack Buswell, on behalf of Choice Autos. The Administrative Law Judge issued a Preliminary Determination on June 25, 1999. No objections to the Preliminary Determination were received. Pursuant to sec. Trans 140.26(5)(d), Wis. Adm. Code, the Preliminary Determination is adopted as the final decision of the Department of Transportation.

FINDINGS OF FACT

1. Choice Autos (Dealer) is licensed by the Wisconsin Department of Transportation as a motor vehicle dealer. Dealer's facilities are located at 1410 North Superior Avenue, Tomah, Wisconsin, 54660-1132.
2. The Dealer had a bond in force from November 30, 1992 to the present. (Bond #07024613 from Auto Owners Insurance Company, Peoria, Illinois from November 30, 1992 to November 30, 1997; and Bond #97200568 from Markel Insurance Company, Sacramento, California from November 30, 1997 to the present date.)

3. On December 1, 1995, Sarene Erickson-Wallerman purchased a 1993 Dodge Spirit, VIN 1B3XA46K6PF657969, from the Dealer.

4. On July 30, 1998, Ms. Erickson-Wallerman's brother took the vehicle to a service station to have a "popping noise" diagnosed. It was discovered that there was a crack in the subframe and the subframe had previously been welded. The Used Vehicle Disclosure Label prepared by the Dealer prior to the sale of the vehicle had disclosed no "apparent cracks or corrective welds on frame or supportive portion of unibody." (Ex. Z13)

5. Subsequent investigation by Ms. Erickson-Wallerman and her father disclosed that the vehicle had been involved in a "serious accident" in Minnesota. The owner's insurance company totaled out the vehicle; however, the title of the vehicle was apparently never branded as salvage. The vehicle then passed through several dealers before it was purchased at an auto auction by Choice Autos.

6. There is no evidence that the Dealer was aware of the vehicle's salvage history; however, several mechanics and a Department of Transportation motor vehicle dealer investigator described the corrective weld as readily apparent. Therefore, the dealer should have discovered the corrective weld in its pre-sale inspection of the vehicle and disclosed it on the Used Vehicle Disclosure Label. The Dealer's failure to disclose the corrective weld on the Used Vehicle Disclosure Label is a violation of sec. Trans 139.04(4), Wis. Adm. Code. A violation of sec. Trans 139.04(4), Wis. Adm. Code, is in turn a violation of sec. 218.01(3)(a)4 or 14, Stats.

7. The Department of Transportation Investigator recommended that the dealer replace the subframe as a remedy. (Ex. Z4) Ms. Erickson-Wallerman obtained an estimate of \$716.87 for this work. Ms. Erickson-Wallerman rejected this remedy and on December 3, 1998, filed a claim against the Dealer's bond. The claim is in the amount of \$7,295.62 and is itemized as follows:

Fraudulent sale	Trade-in difference	\$5,500.00
Estimate Gary's Auto Body	11-4-98	716.87
Genin's Mobil	7-30-98 Sub-par broken weld found	30.56
Genin's Mobil	6-30-98 Brake work	223.14
Russ Darrow-Madison	6-18-98 Head gasket	733.10
Genin's Mobil	2-10-98 Electrical work	91.95

8. In her bond claim, Ms. Erickson-Wallerman stated that if the corrective weld had been disclosed she would not have purchased the vehicle. Ms. Erickson-Wallerman loss was caused by the Dealer's failure to disclose the corrective weld. The loss sustained by Ms. Erickson-Wallerman is the cost of the repairs needed to make the vehicle conform to the condition represented by the Dealer. In this case that amount is \$740.43, the \$30.56 paid for inspection which disclosed the cracked subframe and previous weld plus the estimate of \$716.87 to replace the defective subframe. There is no evidence in the record that the other repair costs

for which Ms. Erickson-Wallerman is seeking compensation are related to the Dealer's failure to disclose the corrective weld on the subframe.

9. The claim was filed within three years of the ending date of the one-year period the Markel Insurance Company bond was in effect (November 30, 1997 to November 30, 1998).

Discussion

The procedure for determining claims against dealer bonds is set forth at Chapter Trans 140, Subchapter II, Wis. Adm. Code. Section Trans 140.21(1), Wis. Adm. Code, provides in relevant part:

A claim is an allowable claim if it satisfies each of the following requirements and is not excluded by sub. (2) or (3):

(a) The claim shall be for monetary damages in the amount of an actual loss suffered by the claimant.

(b) The claim arose during the period covered by the security.

(c) The claimant's loss shall be caused by an act of the licensee, or the [licensee's] agents or employees, which is grounds for suspension or revocation of any of the following

1. A salesperson license or a motor vehicle dealer license, in the case of a secured salesperson or motor vehicle dealer, pursuant to s. 218.01(3)(a) 1. to 14., 18. to 21., 25. or 27. to 31., Stats.

(d) The claim must be made within three years of the last day of the period covered by the security. The department shall not approve or accept any surety bond or letter of credit which provides for a lesser period of protection.

Accordingly, to allow Ms. Erickson-Wallerman's claim, a finding must be made that Choice Autos violated one of the sections of sec. 218.01(3)(c), Stats., listed in sec. Trans 140.21(1)(c)1, Wis. Adm. Code, and that the violation caused the loss sustained by Ms. Erickson-Wallerman.

In this case, the dealer committed a disclosure violation on the Wisconsin Buyer's Guide. It is likely that if Ms. Erickson-Wallerman had been aware of this defect, she would not have purchased the vehicle or would have negotiated a lower purchase price for the vehicle taking into

account the cost of replacing the subframe. Accordingly her loss, the cost to replace the defective subframe, was caused by the Dealer's failure to disclose the corrective welds on the Used Vehicle Disclosure Label.

It should be noted that during the investigation of this claim the Dealer offered to replace the subframe of the vehicle as a settlement of the claim. Assuming the Dealer was qualified to make this repair, he would have been able to resolve this complaint less expensively by performing the repair himself. However, Ms Erickson-Wallerman rejected this offer. Alternatively, during the investigation Ms Erickson-Wallerman sought as a remedy that the Dealer repurchase the vehicle. Assuming the parties could negotiate a reasonable allowance for Ms. Erickson-Wallerman's use of the vehicle for the time between when she purchased it and when the crack in the subframe was discovered, this might also be a better resolution of the complaint. Ms. Erickson-Wallerman would be relieved of a vehicle she no longer feels safe driving and the Dealer, after replacing the defective subframe, would have an opportunity to resell the vehicle and recoup a portion of his investment in the vehicle.

Either of these alternatives may be more appealing to the parties than a cash payment to Ms Erickson-Wallerman to cover the cost of replacing the defective subframe. However, these alternatives are equitable remedies. Chapter Trans 140 Wis. Adm. Code, does not provide for equitable remedies. The parties may negotiate an equitable settlement of the complaint but the Division of Hearings and Appeals can only order a payment to the claimant from the Dealer's bond company.

CONCLUSIONS OF LAW

1. Sarene Erickson-Wallerman claim arose on July 30, 1998, the date the corrective weld on the subframe was discovered. The surety bond issued to Choice Autos by Markel Insurance Company covers the one-year period from November 30, 1997 to November 30, 1998. The claim arose during the period covered by the surety bond.

2. Ms. Erickson-Wallerman filed a claim against the motor vehicle dealer bond of Choice Autos on December 3, 1998. The bond claim was filed within three years of the last day of the period covered by the surety bond. Pursuant to sec. Trans 140.21(1)(d), Wis. Adm. Code, the claim is timely.

3. Ms. Erickson-Wallerman's loss was caused by an act of Choice Autos which would be grounds for suspension or revocation of its motor vehicle dealer license. Ms. Erickson-Wallerman has submitted documentation to support a claim in the amount of \$740.43. Pursuant to sec. Trans 140.21(1)c, Wis. Adm. Code, this claim is allowable.

4. The Division of Hearings and Appeals has authority to issue the follow order.

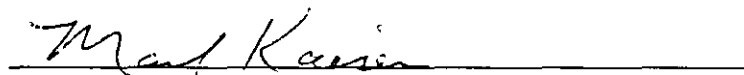
ORDER

The claim filed by Sarene Erickson-Wallerman against the motor vehicle dealer bond of Choice Autos is APPROVED in the amount of \$740.43. Markel Insurance Company shall pay Ms. Erickson-Wallerman this amount for her loss attributable to the actions of Choice Auto.

Dated at Madison, Wisconsin on August 4, 1999

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
5005 University Avenue, Suite 201
Madison, Wisconsin 53705-5400
Telephone: (608) 266-7709
FAX. (608) 264-9885

By:



MARK J. KAISER
ADMINISTRATIVE LAW JUDGE